

## REMARKS

### I. General

The issues outstanding in the instant application are as follows:

- Claims 1-22 stand rejected under 35 U.S.C. §112, second paragraph;
- Claims 1-3 and 5-11 stand rejected under 35 U.S.C. 102(b) as anticipated by Schmid, U.S. Pat. No. 6,039,664 (hereinafter *Schmid*); and
- Claims 12-14 and 16-22 stand rejected under 35 U.S.C. 102(b) as anticipated by Mutoh, German Pat. No. 3809169 (hereinafter *Mutoh*).

The independent claims have been amended above. In light of these amendments and for the reasons presented below Applicant respectfully traverses the outstanding rejections of the claims, and requests reconsideration and withdrawal of the outstanding rejections. Claims 1-22 remain currently pending in this application.

### II. Declarations under 37 C.F.R. §1.132

The Office Action states, that *Schmid* is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131. Since the Declarations of the present Inventor and the sole Inventor of the *Schmid* reference are declarations under 37CFR 1.132 and not attempts to swear behind the *Schmid* reference under the auspices of 37 CFR 1.131, Applicant respectfully asserts that this statement is misplaced. The declarations provide evidence that the *Schmid* reference does not teach or suggest, nor does the *Schmid* reference necessarily possess, the characteristic of balancing a pulley, strut attachment point and pivot bearing in terms of parasitic torque across the pivot bearing. The Inventor's declaration also similarly addresses the rejections under *Mutoh*.

### III. Rejections under 35 U.S.C. §112, second paragraph

Claims 1-22 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. First, the Office Action objects to independent claims 1, 12, and 22, as the phrase "of the type" rendering the claim indefinite. This phrase has been deleted from independent

claim 1, above. The phrase "of the type," nor the word "type," does not (currently) appear in independent claims 12 or 22, nor any other claim.

Claims 1, 12, and 22 are rejected as indefinite because it is allegedly unclear how the tensioner is balanced in terms of parasitic torque across the pivot bearing. Each of these claims have been amended above to include limitations directed to a balance line passing through an axis of the attachment point and a center of the pulley intersects the shaft within a lateral limit of the pivot bearing, thereby substantially balancing the tensioner in terms of parasitic torque across the pivot bearing. Support for this amendment can be found in the present specification from line 20 of page 6, to line 14 of page 7, and in Figures 4 and 7. Applicant respectfully asserts that these amendments clarify how the tensioner is balanced in terms of parasitic torque across the pivot bearing.

In light of the above, Applicant respectfully solicits that the rejections under 35 U.S.C. §112, second paragraph be withdrawn.

#### **IV. Rejections under 35 U.S.C. §102(b)**

It is well settled that to anticipate a claim, a reference must teach every element of the claim, see M.P.E.P. §2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim," see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim," see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejections of record do not satisfy one or more of these requirements, particularly with respect to the claims as amended above.

As noted above, each of independent claims 1, 12 and 22 have been amended above to recite limitations directed to a balance line passing through an axis of the attachment point and a center of the pulley intersects the shaft within a lateral limit of the pivot bearing, thereby

substantially balancing the tensioner in terms of parasitic torque across the pivot bearing. Neither *Schmid* nor *Mutoh* teach or suggest these limitations.

**A. Claims 1-3 and 5-11**

As noted above, claims 1-3 and 5-11 stand rejected as anticipated by *Schmid*. In the earlier presented Declarations under 37 C.F.R. §1.132, the present Inventor and the Inventor of the *Schmid* reference point out that *Schmid* fails to teach or suggest balancing a pulley, attachment point and pivot bearing in terms of parasitic torque across the pivot bearing by arranging the pulley, attachment point and pivot bearing such that a balance line that passes through an axis of the strut attachment point and a center of the tensioner pulley would intersect the pivot shaft, much less intersect the pivot shaft within a lateral limit of the pivot bearing(s). Review of Figure 1 of *Schmid* makes clear that a balance line cannot pass through the axis of the strut attachment point, a center of the tensioner pulley and the pivot shaft of *Schmid*, as the plane containing the pulley axis and the pivot axis is perpendicular to a plane containing the pivot axis and the attachment point. As pointed out in the background section of the specification of present patent application, the attachment point for the strut of *Schmid* remains substantially in the plane at the center of rotation of the pivot bearing. Thus, *Schmid* fails to teach or suggest, a balance line passing through an axis of the attachment point and a center of the pulley intersects the shaft within a lateral limit of the pivot bearing, thereby substantially balancing the tensioner in terms of parasitic torque across the pivot bearing.

For at least the foregoing reasons, Applicant respectfully asserts that *Schmid* fails to teach at least "a balance line passing through an axis of said attachment point and a center of said pulley intersects said shaft within a lateral limit of said pivot bearing, thereby substantially balancing said tensioner in terms of parasitic torque across said pivot bearing" as now recited by independent claim 1. Therefore, independent claim 1 is patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between the claim 1 and the prior art of record, and a person of ordinary skill in the art considering the prior art would not find these differences obvious. For example, *Schmid* is silent concerning parasitic torque, much less substantially balancing a pulley and attachment in terms of parasitic torque across a pivot bearing.

Claims 2, 3 and 5-11 ultimately depend from base independent claim 1, and thereby, each of dependent claims 2, 3 and 5-11 inherit all elements of independent claim 1. Therefore, each of claims 2, 3 and 5-11 set forth features and limitations not recited by *Schmid*. Thus, Applicant respectfully asserts that for at least the reasons advanced above in addressing the anticipation rejection of independent claim 1, claims 2, 3 and 5-11 are also patentable over the 35 U.S.C. § 102 rejections of record.

**B. Claims 12-14 and 16-21**

As also noted above, claims 12-14 and 16-21 stand rejected as anticipated by *Mutoh*. First, Applicant wishes to point out that *Mutoh* fails to explicitly disclose a pivot bearing as explicitly recited by claim 12. Thus, *Mutoh* fails to teach at least this element of claim 12 in as complete detail as recited in the claim.

Further, the present Inventor's Declaration under 37 C.F.R. §1.132 points out that:

*Mutoh* fails to teach or suggest balancing a pulley, attachment point and pivot bearing in terms of parasitic torque across the pivot bearing by arranging a pulley, attachment point and pivot bearing such that a balance line that might be inferred as passing through an axis of the strut contact point of *Mutoh* and a center of the tensioner pulley would intersect the pivot shaft, much less intersect the pivot shaft within a lateral limit of the pivot bearing(s). See Figure 2 of *Mutoh*. Review of Figure 2 of *Mutoh* makes clear that a balance line cannot pass through the axis of the strut attachment point, a center of the tensioner pulley and the pivot shaft of *Mutoh*, as the plane containing the pulley axis and the pivot axis is perpendicular to a plane containing the pivot axis and the attachment point.

Thus, *Mutoh* fails to teach at least "a balance line passing through an axis of said attachment point and a center of said pulley intersects said shaft within a lateral limit of said pivot bearing, thereby substantially balancing said tensioner in terms of parasitic torque across said pivot bearing," as now recited by independent claim 12.

For at least the above reasons, Applicant respectfully asserts that independent claim 12 is patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between the claims and the prior art of record, and a person of ordinary skill in the art considering the prior art would not find these differences obvious. For example, *Mutoh* is

silent concerning parasitic torque and a pivot bearing, much less substantially balancing a pulley and attachment in terms of parasitic torque across such a pivot bearing.

Claims 13, 14 and 16-21 ultimately depend from base independent claim 12, and thereby, each of dependent claims 13, 14 and 16-21 inherit all elements of independent claim 12. Therefore, each of claims 13, 14 and 16-21 set forth features and limitations not recited by *Mutoh*. Thus, Applicant respectfully asserts that for at least the reasons advanced above in addressing the anticipation rejection of independent claim 12, claims 13, 14 and 16-21 are also patentable over the 35 U.S.C. § 102 rejections of record.

### C. Claim 22

As noted, independent claim 22 stands rejected as anticipated by *Mutoh*. Again as a preliminary matter, Applicant wishes to point out that *Mutoh* fails to explicitly disclose a pivot bearing as explicitly recited by claim 22. Thus, *Mutoh* fails to teach at least this element of claim 22 in as complete detail as recited in the claim.

Further, independent method claim 22, as amended recites:

... said pulley being laterally offset in relation to said pivot bearing, and an attachment point for a strut, said attachment point being laterally offset in relation to said pivot bearing, such that a balance line passing through an axis of said attachment point and a center of said pulley intersects said shaft within a lateral limit of said pivot bearing,  
communicating a biasing force from said strut to said attachment point,  
said supporting structure communicating said biasing force to said pulley through rotation about said pivot bearing, and  
substantially balancing said biasing force at said pivot bearing in terms of parasitic torque.

As discussed above, the present Inventor's Declaration under 37 C.F.R. §1.132 points out that *Mutoh* fails to teach or suggest arranging a pulley, attachment point and pivot bearing such that a balance line that might be inferred as passing through an axis of the strut contact point of *Mutoh* and a center of the tensioner pulley would intersect the pivot shaft, much less



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intersect the pivot shaft within a lateral limit of the pivot bearing(s). See Figure 2 of *Mutoh*. Review of Figure 2 of *Mutoh* makes clear that a balance line cannot pass through the axis of the strut attachment point, a center of the tensioner pulley and the pivot shaft of *Mutoh*, as the plane containing the pulley axis and the pivot axis is perpendicular to a plane containing the pivot axis and the attachment point.

Thus, *Mutoh* fails to teach at least "a balance line passing through an axis of said attachment point and a center of said pulley intersects said shaft within a lateral limit of said pivot bearing," as now recited by independent claim 22.

For at least the above reasons, Applicant respectfully asserts that independent claim 22 is patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between the claims and the prior art of record, and a person of ordinary skill in the art considering the prior art would not find these differences obvious. For example, *Mutoh* is silent concerning parasitic torque and a pivot bearing, much less substantially balancing a pulley and attachment in terms of parasitic torque across such a pivot bearing.

#### V. Conclusion

In light of the amendments presented above and for at least the reasons given above, particularly as reinforced by the previously filed Declarations under 37 C.F.R. §1.132 of the present Inventor, Alexander Serkh, and the Inventor of the *Schmid* reference Michael B. Schmid, Applicant submits that the pending claims distinguish over the prior art of record under 35 U.S.C. § 102. Accordingly, Applicant asserts that this application is in condition for allowance.

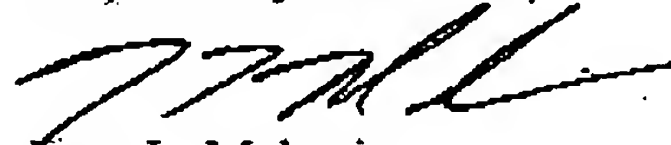
This response is accompanied by a two-month petition for extension of time. The fees for the extension of time are dealt with in the petition. Applicant believes no further fees are required. However, if a further fee is due, please charge Deposit Account No. 07-0475, from which the undersigned is authorized to draw.

Applicant respectfully requests that the Examiner call the below listed attorney if the Examiner believes that the attorney can be helpful in resolving any remaining issues or can otherwise be helpful in expediting prosecution of the present application.

Dated: November 25, 2008

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Respectfully submitted,



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